

REMARKS/ARGUMENTS

By this amendment, claims 5 and 6 have been amended as suggested by the Examiner.

This application now contains claims 1-24. In view of the above amendments and the remarks hereinafter, it is respectfully requested that this application be reconsidered.

Applicant respectfully requests reconsideration of the election of invention and restriction. The method claims, claims 13-24 cannot be practiced with an apparatus other than the apparatus of claim 1. Applicant disagrees with the Examiner's argument that an apparatus without a joint could be used to practice claim 1. Claim 1 recites the joint. Indeed, claim 1 is coextensive with the method claim 13.

The rejection of claims 5 and 6 under 35 U.S.C. 112 is respectfully traversed. The objection of the Examiner has been cured by this amendment, which adopts the suggestion of the Examiner.

The rejection of claim 1 under 35 U.S.C. 102 as obvious over Whitelaw is respectfully traversed. Whitelaw does not disclose:

“means for adjusting the resistance in the friction means wherein the friction means provides a preadjusted resistance to motion independent of the velocity of the motion in a pattern to provide proper tracking.”

which is recited in the last paragraph of claim 1. The Examiner is correct that this clause like the other clauses in this claim, is controlled by paragraph 6 of 35 U.S.C. 112. Thus, it incorporates the language starting on page 39 of the specification relating to tracking. There is no mention of tracking nor any suggestion of it in Whitelaw.

The rejection of claim 1 under 35 U.S.C. 103 as unpatentable over Whitelaw is respectfully traversed. Whitelaw does not suggest that pain is caused by improper tracking or that improper tracking is a problem to be cured by means of controlled resistance on each side of a joint. The applicant has discovered that it is able to cure many painful arthrokinetic dysfunctions with the mechanism recited in claim 1 by properly aligning motion (tracking) of the muscular motion. This method has proved surprisingly successful and applicant can submit under affidavit tests to show that result. The reduction of pain from patella-femoral problems has been reduced to the point so that patients who could not walk without crutches and could not climb stairs can when the apparatus as recited in claim 1 was applied after testing of the patients, which is also recited in claim 1.

The rejection of claims 1-12 as being unpatentable over Airy in view of Whitelaw or unpatentable over Airy in view of Whitelaw and further in view of Stark is respectfully traversed. None of these references disclose the last paragraph of claim 1 as interpreted under 35 U.S.C. 112, paragraph 6, and no combination of them can provide such a disclosure. Moreover, none of them provide the suggestion that arthrokinetic dysfunction can be cured by adjusting the resistance in the mechanism as disclosed in claim 1 so as to provide proper tracking. This concept is unobvious and results in the solution as recited in claim 1 being unobvious to a person of ordinary skill in the art at the time of the invention.

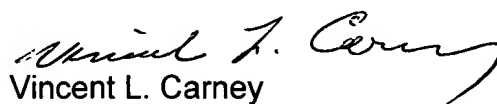
The rejection of claims 1-2 and 12 on the ground of double patenting over claims 1-7 of U.S. Patent 5,788,618 is respectfully traversed. Claims 1-7 of U.S. Patent 5,788,618 do not recite any language corresponding to the last paragraph of claim 1 in this

application. Accordingly, double patenting does not exist here.

Attached hereto is a marked-up version of the changes made to the amended claims by the current amendment. This attachment is captioned "**Version with markings to show changes made**". For the convenience of the Examiner and the applicant, "**Clean Set of Pending Claims**" is also attached hereto, containing all the claims as they will be after entering this amendment.

Since each of the claims now in this application defines patentably over each of the cited references and every combination of the cited references and since the claims are proper and definite, it is respectfully requested that they be allowed and this application be passed to issue.

Respectfully submitted,


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VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Claims:

5. (amended) Orthotic apparatus according to claim 3 wherein the first section is sized and constructed to be connected to one of a leg and thigh and the second section is sized and constructed to be connected to the other of a leg and thigh.

6. (amended) Orthotic apparatus according to claim 3 wherein the first section is sized and constructed to be connected to one of a forearm and arm and the second section is sized and constructed to be connected to the other of a forearm and arm.